

AMENDED IN ASSEMBLY SEPTEMBER 4, 2015

SENATE BILL

No. 374

Introduced by Senator Hall Hueso
(Principal coauthor: Assembly Member Atkins)

February 24, 2015

~~An act to amend Section 12715 of the Government Code, relating to tribal gaming.~~ *An act to amend Sections 20209.14 and 22161 of the Public Contract Code, relating to local public contracts.*

LEGISLATIVE COUNSEL'S DIGEST

SB 374, as amended, ~~Hall Hueso. Tribal gaming: local agencies.~~ *Local agency design-build projects: transit districts.*

Existing law authorizes local agencies to use the design-build method of project delivery for specified projects, except for projects on the state highway system. Existing law defines "local agency" for purposes of these provisions as cities and counties, certain special districts relating to wastewater, solid waste, water recycling, and fire protection facilities, joint powers authorities formed to provide transit service, and specified types of local public entities responsible for the construction of transit projects. These provisions further define "project" specifically for each category of local agency. Existing law requires specified information submitted by a design-build entity, as defined, in the design-build procurement process to be certified under penalty of perjury.

This bill would specify that the definition of a local agency authorized to use the design-build method of project delivery includes the San Diego Association of Governments. The bill would define projects, as it pertains to the San Diego Association of Governments, to include development projects adjacent, or physically or functionally related, to transit facilities developed by the association. By expanding the

design-build authorization of the San Diego Association of Governments to additional development projects, the bill would expand the scope of crime of perjury and would impose a state-mandated local program.

This bill also makes a technical correction to a cross-reference.

This bill would make legislative findings and declarations as to the necessity of a special statute for the San Diego Association of Governments.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law creates in the State Treasury the Indian Gaming Special Distribution Fund for the receipt and deposit of moneys received by the state from certain Indian tribes pursuant to the terms of gaming compacts entered into with the state. Existing law authorizes moneys in that fund to be used for specified purposes, including for grants for the support of state and local government agencies impacted by tribal government gaming. Existing law, until January 1, 2021, creates a County Tribal Casino Account in the treasury of each county that contains a tribal casino, which is funded according to specified formulas. Existing law requires the Controller to divide the County Tribal Casino Account for each county that has gaming devices that are subject to an obligation to make contributions to the Indian Gaming Special Distribution Fund into a separate account, known as an Individual Tribal Casino Account, for each tribe that operates a casino within the county. Each Individual Tribal Casino Account is required to be funded in proportion to the amount that each individual tribe paid in the prior fiscal year to the Indian Gaming Special Distribution Fund, and used for grants to local agencies impacted by tribal casinos, as specified. Existing law establishes an Indian Gaming Local Community Benefit Committee in each county in which gaming is conducted, specifies the composition and responsibilities of that committee, and requires that committee to make the selection of grants from the casino accounts. Among other things, the committee is responsible for establishing all application policies and procedures for grants from the casino accounts.~~

~~Existing law requires funds not allocated from a County Tribal Casino Account or an Individual Tribal Casino Account for the grants by the end of each fiscal year to revert back to the Indian Gaming Special~~

~~Distribution Fund, except for moneys allocated for specified fiscal years, which are required to be eligible for expenditure through the calendar year.~~

~~This bill would delete the obsolete provisions relating to allocations made in those specified fiscal years.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. *Section 20209.14 of the Public Contract Code is*
2 *amended to read:*

3 20209.14. (a) This article shall remain in effect only until
4 January 1, 2017, and as of that date is repealed.

5 (b) This article shall only apply to transit operators that begin
6 a project solicitation before January 1, 2015. A transit operator
7 that begins a project solicitation on or after January 1, 2015, is
8 subject to Chapter 4 (commencing with Section ~~22610~~). 22160).

9 SEC. 2. *Section 22161 of the Public Contract Code is amended*
10 *to read:*

11 22161. For purposes of this chapter, the following definitions
12 apply:

13 (a) “Best value” means a value determined by evaluation of
14 objective criteria that may include, but not be limited to price,
15 features, functions, life-cycle costs, experience, and past
16 performance. A best value determination may involve the selection
17 of the lowest cost proposal meeting the interests of the local agency
18 and meeting the objectives of the project, selection of the best
19 proposal for a stipulated sum established by the procuring agency,
20 or a tradeoff between price and other specified factors.

21 (b) “Construction subcontract” means each subcontract awarded
22 by the design-build entity to a subcontractor that will perform work
23 or labor or render service to the design-build entity in or about the
24 construction of the work or improvement, or a subcontractor
25 licensed by the State of California that, under subcontract to the
26 design-build entity, specially fabricates and installs a portion of
27 the work or improvement according to detailed drawings contained
28 in the plans and specifications produced by the design-build team.

1 (c) “Design-build” means a project delivery process in which
2 both the design and construction of a project are procured from a
3 single entity.

4 (d) “Design-build entity” means a corporation, limited liability
5 company, partnership, joint venture, or other legal entity that is
6 able to provide appropriately licensed contracting, architectural,
7 and engineering services as needed pursuant to a design-build
8 contract.

9 (e) “Design-build team” means the design-build entity itself
10 and the individuals and other entities identified by the design-build
11 entity as members of its team. Members shall include the general
12 contractor and, if utilized in the design of the project, all electrical,
13 mechanical, and plumbing contractors.

14 (f) “Local agency” means the following:

15 (1) A city, county, or city and county.

16 (2) A special district that operates wastewater facilities, solid
17 waste management facilities, water recycling facilities, or fire
18 protection facilities.

19 (3) Any transit district, included transit district, municipal
20 operator, included municipal operator, any consolidated agency,
21 as described in Section 132353.1 of the Public Utilities Code, any
22 joint powers authority formed to provide transit service, any county
23 transportation commission created pursuant to Section 130050 of
24 the Public Utilities Code, or any other local or regional agency,
25 responsible for the construction of transit projects.

26 (4) *The San Diego Association of Governments, as referenced*
27 *in the San Diego Regional Transportation Consolidation Act*
28 *(Chapter 3 (commencing with Section 132350) of Division 12.7*
29 *of the Public Utilities Code).*

30 (g) (1) For a local agency defined in paragraph (1) of
31 subdivision (f), “project” means the construction of a building or
32 buildings and improvements directly related to the construction
33 of a building or buildings, county sanitation wastewater treatment
34 facilities, and park and recreational facilities, but does not include
35 the construction of other infrastructure, including, but not limited
36 to, streets and highways, public rail transit, or water resources
37 facilities and infrastructure. For a local agency defined in paragraph
38 (1) of subdivision (f) that operates wastewater facilities, solid waste
39 management facilities, or water recycling facilities, “project” also
40 means the construction of regional and local wastewater treatment

1 facilities, regional and local solid waste facilities, or regional and
2 local water recycling facilities.

3 (2) For a local agency defined in paragraph (2) of subdivision
4 (f), “project” means the construction of regional and local
5 wastewater treatment facilities, regional and local solid waste
6 facilities, regional and local water recycling facilities, or fire
7 protection facilities.

8 (3) For a local agency defined in paragraph (3) of subdivision
9 (f), “project” means a transit capital project that begins a project
10 solicitation on or after January 1, 2015. A “project,” as defined by
11 this paragraph, that begins the solicitation process before January
12 1, 2015, is subject to Article 6.8 (commencing with Section
13 20209.5) of Chapter 1. “Project,” as defined by this paragraph,
14 does not include state highway construction or local street and
15 road projects.

16 (4) *For a local agency defined in paragraph (4) of subdivision*
17 *(f), “project” has the same meaning as in paragraph (3), and in*
18 *addition shall include development projects adjacent, or physically*
19 *or functionally related, to transit facilities developed or jointly*
20 *developed by the local agency.*

21 *SEC. 3. The Legislature finds and declares that a special law*
22 *is necessary and that a general law cannot be made applicable*
23 *within the meaning of Section 16 of Article IV of the California*
24 *Constitution because of the San Diego Association of Governments’*
25 *unique responsibilities as the consolidated transportation agency*
26 *with capital project implementation responsibilities, which include*
27 *design and construction of transit infrastructure, and to bring the*
28 *San Diego Association of Governments into alignment with existing*
29 *authority held by other agencies with transit development*
30 *responsibilities.*

31 *SEC. 4. No reimbursement is required by this act pursuant to*
32 *Section 6 of Article XIII B of the California Constitution because*
33 *the only costs that may be incurred by a local agency or school*
34 *district will be incurred because this act creates a new crime or*
35 *infraction, eliminates a crime or infraction, or changes the penalty*
36 *for a crime or infraction, within the meaning of Section 17556 of*
37 *the Government Code, or changes the definition of a crime within*
38 *the meaning of Section 6 of Article XIII B of the California*
39 *Constitution.*

1 SECTION 1.—Section 12715 of the Government Code is
2 amended to read:

3 12715. (a) The Controller, acting in consultation with the
4 California Gambling Control Commission, shall divide the County
5 Tribal Casino Account for each county that has gaming devices
6 that are subject to an obligation to make contributions to the Indian
7 Gaming Special Distribution Fund into a separate account for each
8 tribe that operates a casino within the county. These accounts shall
9 be known as Individual Tribal Casino Accounts, and funds may
10 be released from these accounts to make grants selected by an
11 Indian Gaming Local Community Benefit Committee pursuant to
12 the method established by this section to local jurisdictions
13 impacted by tribal casinos. Each Individual Tribal Casino Account
14 shall be funded in proportion to the amount that each individual
15 tribe paid in the prior fiscal year to the Indian Gaming Special
16 Distribution Fund.

17 (b) (1) There is hereby created in each county in which Indian
18 gaming is conducted an Indian Gaming Local Community Benefit
19 Committee. The selection of all grants from each Individual Tribal
20 Casino Account or County Tribal Casino Account shall be made
21 by each county’s Indian Gaming Local Community Benefit
22 Committee. In selecting grants, the Indian Gaming Local
23 Community Benefit Committee shall follow the priorities
24 established in subdivision (g) and the requirements specified in
25 subdivision (h). This committee has the following additional
26 responsibilities:

27 (A) Establishing all application policies and procedures for
28 grants from the Individual Tribal Casino Account or County Tribal
29 Casino Account. Each grant application shall clearly show how
30 the grant will mitigate the impact of the casino on the grant
31 applicant.

32 (B) Assessing the eligibility of applications for grants from local
33 jurisdictions impacted by tribal gaming operations.

34 (C) Determining the appropriate amount for reimbursement
35 from the aggregate county tribal account of the demonstrated costs
36 incurred by the county for administering the grant programs. The
37 reimbursement for county administrative costs may not exceed 2
38 percent of the aggregate county tribal account in any given fiscal
39 year.

1 ~~(2) Except as provided in Section 12715.5, the Indian Gaming~~
2 ~~Local Community Benefit Committee shall be composed of seven~~
3 ~~representatives, consisting of the following:~~

4 ~~(A) Two representatives from the county, selected by the county~~
5 ~~board of supervisors.~~

6 ~~(B) Three elected representatives from cities located within four~~
7 ~~miles of a tribal casino in the county, selected by the county board~~
8 ~~of supervisors. In the event that there are no cities located within~~
9 ~~four miles of a tribal casino in the county, other local~~
10 ~~representatives may be selected upon mutual agreement by the~~
11 ~~county board of supervisors and a majority of the tribes paying~~
12 ~~into the Indian Gaming Special Distribution Fund in the county.~~
13 ~~When there are no cities within four miles of a tribal casino in the~~
14 ~~county, and when the Indian Gaming Local Community Benefit~~
15 ~~Committee acts on behalf of a county where no tribes pay into the~~
16 ~~Indian Gaming Special Distribution Fund, other local~~
17 ~~representatives may be selected upon mutual agreement by the~~
18 ~~county board of supervisors and a majority of the tribes operating~~
19 ~~casinos in the county. However, if only one city is within four~~
20 ~~miles of a tribal casino and that same casino is located entirely~~
21 ~~within the unincorporated area of that particular county, only one~~
22 ~~elected representative from that city shall be included on the Indian~~
23 ~~Gaming Local Community Benefit Committee.~~

24 ~~(C) Two representatives selected upon the recommendation of~~
25 ~~a majority of the tribes paying into the Indian Gaming Special~~
26 ~~Distribution Fund in each county. When an Indian Gaming Local~~
27 ~~Community Benefit Committee acts on behalf of a county in which~~
28 ~~no tribes pay into the Indian Gaming Special Distribution Fund,~~
29 ~~the two representatives may be selected upon the recommendation~~
30 ~~of the tribes operating casinos in the county.~~

31 ~~(e) Sixty percent of each Individual Tribal Casino Account shall~~
32 ~~be available for nexus grants on a yearly basis to cities and counties~~
33 ~~impacted by tribes that are paying into the Indian Gaming Special~~
34 ~~Distribution Fund, according to the four-part nexus test described~~
35 ~~in paragraph (1). Grant awards shall be selected by each county's~~
36 ~~Indian Gaming Local Community Benefit Committee and shall~~
37 ~~be administered by the county. Grants may be awarded on a~~
38 ~~multiyear basis, and these multiyear grants shall be accounted for~~
39 ~~in the grant process for each year.~~

1 ~~(1) A nexus test based on the geographical proximity of a local~~
2 ~~government jurisdiction to an individual Indian land upon which~~
3 ~~a tribal casino is located shall be used by each county's Indian~~
4 ~~Gaming Local Community Benefit Committee to determine the~~
5 ~~relative priority for grants, using the following criteria:~~
6 ~~(A) Whether the local government jurisdiction borders the Indian~~
7 ~~lands on all sides.~~
8 ~~(B) Whether the local government jurisdiction partially borders~~
9 ~~Indian lands.~~
10 ~~(C) Whether the local government jurisdiction maintains a~~
11 ~~highway, road, or other thoroughfare that is the predominant access~~
12 ~~route to a casino that is located within four miles.~~
13 ~~(D) Whether all or a portion of the local government jurisdiction~~
14 ~~is located within four miles of a casino.~~
15 ~~(2) Fifty percent of the amount specified in this subdivision~~
16 ~~shall be awarded in equal proportions to local government~~
17 ~~jurisdictions that meet all four of the nexus test criteria in paragraph~~
18 ~~(1). If no eligible local government jurisdiction satisfies this~~
19 ~~requirement, the amount specified in this paragraph shall be made~~
20 ~~available for nexus grants in equal proportions to local government~~
21 ~~jurisdictions meeting the requirements of paragraph (3) or (4).~~
22 ~~(3) Thirty percent of the amount specified in this subdivision~~
23 ~~shall be awarded in equal proportions to local government~~
24 ~~jurisdictions that meet three of the nexus test criteria in paragraph~~
25 ~~(1). If no eligible local government jurisdiction satisfies this~~
26 ~~requirement, the amount specified in this paragraph shall be made~~
27 ~~available for nexus grants in equal proportions to local government~~
28 ~~jurisdictions meeting the requirements of paragraph (2) or (4).~~
29 ~~(4) Twenty percent of the amount specified in this subdivision~~
30 ~~shall be awarded in equal proportions to local government~~
31 ~~jurisdictions that meet two of the nexus test criteria in paragraph~~
32 ~~(1). If no eligible local government jurisdiction satisfies this~~
33 ~~requirement, the amount specified in this paragraph shall be made~~
34 ~~available for nexus grants in equal proportions to local government~~
35 ~~jurisdictions meeting the requirements of paragraph (2) or (3).~~
36 ~~(d) Twenty percent of each Individual Tribal Casino Account~~
37 ~~shall be available for discretionary grants to local jurisdictions~~
38 ~~impacted by tribes that are paying into the Indian Gaming Special~~
39 ~~Distribution Fund. These discretionary grants shall be made~~
40 ~~available to all local jurisdictions in the county irrespective of any~~

1 nexus to impacts from any particular tribal casino, as described in
2 paragraph (1) of subdivision (e). Grant awards shall be selected
3 by each county's Indian Gaming Local Community Benefit
4 Committee and shall be administered by the county. Grants may
5 be awarded on a multiyear basis, and these multiyear grants shall
6 be accounted for in the grant process for each year.

7 (e) (1) ~~Twenty percent of each Individual Tribal Casino Account~~
8 ~~shall be available for discretionary grants to local jurisdictions~~
9 ~~impacted by tribes that are not paying into the Indian Gaming~~
10 ~~Special Distribution Fund. These grants shall be made available~~
11 ~~to local jurisdictions in the county irrespective of any nexus to~~
12 ~~impacts from any particular tribal casino, as described in paragraph~~
13 ~~(1) of subdivision (e), and irrespective of whether the impacts~~
14 ~~presented are from a tribal casino that is not paying into the Indian~~
15 ~~Gaming Special Distribution Fund. Grant awards shall be selected~~
16 ~~by each county's Indian Gaming Local Community Benefit~~
17 ~~Committee and shall be administered by the county. Grants may~~
18 ~~be awarded on a multiyear basis, and these multiyear grants shall~~
19 ~~be accounted for in the grant process for each year.~~

20 (A) ~~Grants awarded pursuant to this subdivision are limited to~~
21 ~~addressing service-oriented impacts and providing assistance with~~
22 ~~one-time large capital projects related to Indian gaming impacts.~~

23 (B) ~~Grants shall be subject to the sole sponsorship of the tribe~~
24 ~~that pays into the Indian Gaming Special Distribution Fund and~~
25 ~~the recommendations of the Indian Gaming Local Community~~
26 ~~Benefit Committee for that county.~~

27 (2) ~~If an eligible county does not have a tribal casino operated~~
28 ~~by a tribe that does not pay into the Indian Gaming Special~~
29 ~~Distribution Fund, the moneys available for discretionary grants~~
30 ~~under this subdivision shall be available for distribution pursuant~~
31 ~~to subdivision (d).~~

32 (f) (1) ~~For each county that does not have gaming devices~~
33 ~~subject to an obligation to make payments to the Indian Gaming~~
34 ~~Special Distribution Fund, funds may be released from the county's~~
35 ~~County Tribal Casino Account to make grants selected by the~~
36 ~~county's Indian Gaming Local Community Benefit Committee~~
37 ~~pursuant to the method established by this section to local~~
38 ~~jurisdictions impacted by tribal casinos. These grants shall be made~~
39 ~~available to local jurisdictions in the county irrespective of any~~
40 ~~nexus to any particular tribal casino. These grants shall follow the~~

1 priorities specified in subdivision (g) and the requirements specified
2 in subdivision (h).

3 (2) Funds not allocated from a County Tribal Casino Account
4 by the end of each fiscal year shall revert back to the Indian
5 Gaming Special Distribution Fund.

6 (g) The following uses shall be the priorities for the receipt of
7 grant moneys from Individual Tribal Casino Accounts: law
8 enforcement, fire services, emergency medical services,
9 environmental impacts, water supplies, waste disposal, behavioral,
10 health, planning and adjacent land uses, public health, roads,
11 recreation and youth programs, and child care programs.

12 (h) In selecting grants pursuant to subdivision (b), an Indian
13 Gaming Local Community Benefit Committee shall select only
14 grant applications that mitigate impacts from casinos on local
15 jurisdictions. If a local jurisdiction uses a grant selected pursuant
16 to subdivision (b) for any unrelated purpose, the grant shall
17 terminate immediately and any moneys not yet spent shall revert
18 to the Indian Gaming Special Distribution Fund. If a local
19 jurisdiction approves an expenditure that mitigates an impact from
20 a casino on a local jurisdiction and that also provides other benefits
21 to the local jurisdiction, the grant selected pursuant to subdivision
22 (b) shall be used to finance only the proportionate share of the
23 expenditure that mitigates the impact from the casino.

24 (i) All grants from Individual Tribal Casino Accounts shall be
25 made only upon the affirmative sponsorship of the tribe paying
26 into the Indian Gaming Special Distribution Fund from whose
27 Individual Tribal Casino Account the grant moneys are available
28 for distribution. Tribal sponsorship shall confirm that the grant
29 application has a reasonable relationship to a casino impact and
30 satisfies at least one of the priorities listed in subdivision (g). A
31 grant may not be made for any purpose that would support or fund,
32 directly or indirectly, any effort related to the opposition or
33 challenge to Indian gaming in the state, and, to the extent any
34 awarded grant is utilized for any prohibited purpose by any local
35 government, upon notice given to the county by any tribe from
36 whose Individual Tribal Casino Account the awarded grant went
37 toward that prohibited use, the grant shall terminate immediately
38 and any moneys not yet used shall again be made available for
39 qualified nexus grants.

1 ~~(j) A local government jurisdiction that is a recipient of a grant~~
2 ~~from an Individual Tribal Casino Account or a County Tribal~~
3 ~~Casino Account shall provide notice to the public, either through~~
4 ~~a slogan, signage, or other mechanism, stating that the local~~
5 ~~government project has received funding from the Indian Gaming~~
6 ~~Special Distribution Fund and further identifying the particular~~
7 ~~Individual Tribal Casino Account from which the grant derives.~~
8 ~~(k) (1) Each county's Indian Gaming Local Community Benefit~~
9 ~~Committee shall submit to the Controller a list of approved projects~~
10 ~~for funding from Individual Tribal Casino Accounts. Upon receipt~~
11 ~~of this list, the Controller shall release the funds directly to the~~
12 ~~local government entities for which a grant has been approved by~~
13 ~~the committee.~~
14 ~~(2) Funds not allocated from an Individual Tribal Casino~~
15 ~~Account by the end of each fiscal year shall revert back to the~~
16 ~~Indian Gaming Special Distribution Fund.~~
17 ~~(l) Notwithstanding any other law, a local government~~
18 ~~jurisdiction that receives a grant from an Individual Tribal Casino~~
19 ~~Account shall deposit all funds received in an interest-bearing~~
20 ~~account and use the interest from those funds only for the purpose~~
21 ~~of mitigating an impact from a casino. If any portion of the funds~~
22 ~~in the account is used for any other purpose, the remaining portion~~
23 ~~shall revert to the Indian Gaming Special Distribution Fund. As a~~
24 ~~condition of receiving further funds under this section, a local~~
25 ~~government jurisdiction, upon request of the county, shall~~
26 ~~demonstrate to the county that all expenditures made from the~~
27 ~~account have been in compliance with the requirements of this~~
28 ~~section.~~